HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 730/06 (M/S)

Govind Ballabh

Vs.

D.J. Almora and others

Approved for reporting.

~~Not approved for reporting~~

Date of decision: 18.07.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRTIT PETITION NO. 730 (MS) OF 2006

Govind Ballabh,
S/o Sri Ravadhar Kapil,
R/o Thana Bazar, Almora,
District-Almora. .....Petitioners.

Versus

1. District Judge, Almora.
2. Prescribed Authority/Civil Judge, (Junior Division), Almora, District –Almora.
3. Kailash Chandra Durgapal,
4. Mahesh Chandra Durgapal,,

Both respondents no. 3 and 4 are sons of Jagnath Durgapal, R/o Thana Bazar, Almora, District-Almora.

.....Respondents.

Dated: 18.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Manoj Kumar Sharma & Sri H.V. Shah, Advocates for the petitioner, and Standing Counsel for the respondents no. 1 and 2 and Sri R.C. Upadhyaya for the respondents no.3 and 4.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 23rd June, 2004 (Annexure No. 9 to the writ petition) passed by the respondent no. 2 and the order dated 16th May, 2006 (Annexure No. 9 to the writ petition) passed by the respondent no.1.

Briefly stated, an application under section 21 (1) (a) of U.P. Act No. 13 of 1972 was filed by the respondents claming the eviction of the petitioner from the shop situate in Building NO. 252 Thana Bazar, Almora of which the petitioner is a

tenant at the rate of Rs. 50/- per month. The application under section 21(1) (a) was filed by Sri Kailash Chandra Durgapal & Mahesh Chandra Durgapal stating therein that the shop in dispute in possession of the petitioner is required for their use and occupation. It was stated that the landlord is doing the business as a tenant of Deep Lal Shah, Pawan Lal Shah and they have filed a release application being Rent Control Case No. 7 of 1999 against the respondents and as such the shop is required by the landlord for their use and occupation.

A written statement was filed on behalf of the petitioner, where paragraph 2 of the application has been admitted by which it has been stated that the landlord respondents themselves are the tenants in the accommodation as stated above.

On behalf of the respondents, Sri Mahendra Pandey, Ishwari Dutt Pandey and Kalaish Chandra Durga Pal have filed their affidavits.

Sri Kailash Chandra Durga Pal in his affidavit has stated that the landlord is running the shop in a tenanted premises and therefore, the requirement of the landlord is bonafide and comparative hardship also lies in their favour as the Case No.7 of 1999 has been filed for eviction against the respondents.

A rejoinder affidavit has been filed by the petitioner. The petitioner in support of his case filed the affidavit of Sri Govind Ballabh Kapil and has admitted this fact that the landlord is a tenant of the premises. Similarly Sri Govardhan Butt has also filed the affidavit confirming the aforesaid fact.

The Prescribed Authority passed the order after hearing the parties and has come to the conclusion that the proceedings under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 has already been instituted against the landlord/respondent being Case No. 7 of 1999 and the

premises is non-residential and this fact is proved from the affidavit of Mahendra Pandey and Ishwari Dutt Pandey.

The dominant purpose being non-residential, the Prescribed Authority, therefore, has recorded the finding that the shop is required bona fide for his use and occupation.

Sri Kailash Chandra Durga Pal has been held to be a trained Drafts-man, but he is not doing business of Thekedari and he is doing the business in a tenanted premises. The Prescribed Authority, therefore, has recorded a finding to the following effect:-

"उपरोक्त विवेचना के आधार पर स्पष्ट है कि प्रार्थी कैलाशचन्द्र दुर्गापाल से किराये की दुकान खाली हो जाने की दशा में, उसके भवन में वादग्रस्त परिसर जिसमें अतिरिक्त अन्य कोई स्थान दुकानदारी हेतु उसके पास नहीं हैं, की सद्भावी आवश्यकता उत्पन्न हो गई है। उसकी आवश्यकता वास्तविक है, बनावटी नहीं।"

So far as the comparative hardship is concerned, the tenant has not made any effort to search out the alternative accommodation when in point of fact the family of six members shall suffer great hardship in comparison of the tenant as will appear from the following findings of the Prescribed Authority:-

शपथकर्ता महेन्द्रपाण्डे और ईश्वरीदत्त पाण्डे ने भी अपने शपथपत्र में कथन किया है कि विपक्षी बाजार में उपलब्ध कहीं भी दुकान किराये पर ले सकता है। विपक्षी की ओर से कथन किया गया है कि विवादित परिसर के जिस भाग में दुकान है, यह दुकान ही विपक्षी की आजीविका का एकमात्र साधन है। उसके लड़के भी बेरोजगार हैं, तीन पुत्रियां विवाह योग्य हैं, प्रार्थीगण से विपक्षी की आवश्यकता कई गुना अधिक है । प्रार्थीगण के स्वर्गीय पिता द्वारा 48 वर्ष पूर्व तुलाराम साह से जब मकान खरीदा गया तब भी विपक्षी के पिता इस पूरे मकान में किरायेदार थे और तभी से इस मकान में रहते आये हैं। उसकी तुलना में प्रार्थीगण की आवश्कयता किसी भी भांति अधिक नहीं है। वह व

उसका परिवार इस दुकान के व्यवसाय से भरण पोषण करता है। उसे दुकान एवं आवास हेतु इस नगर में अन्यत्र कहीं स्थान उपलब्ध नहीं है। उसने अन्यत्र आवास व दुकान प्राप्त करने हेतु कई प्रयास किये परन्तु नगर में उसे कहीं भी भवन नहीं मिला न बाजार में भवन रिक्त ही है। उसका छ : सदस्यों का परिवार है जो मात्र उसपर आश्रित है। यदि विवादित परिसर किसी दशा में उससे खाली कराया गया तो उसे व उसके परिवार के सदस्यों को भूखों मरने की नौबत आ जायेगी।

The petitioner aggrieved against the said order preferred an appeal before the appellate Court. The appellate Authority has alos recorded a finding that since the Rent Control Case No. 7 of 1999 has been filed against the landlord, which is the only source of livelihood for the landlords and their sister Usha Durga Pal, who is doing the knitting work there and therefore, the shop is bonafide required by the landlord.

The findings on the comparative hardship has also been confirmed by the appellate Authority. The appellate Court has also come to the conclusion that even if it is assumed that Kailash Chandra Durga Pal is a trained Drafts-man, he has a right to augment his own income.

So far as bonafide need is concerned, the appellate Authority has concluded to the following effect:-

"27. उपरोक्त विचार विमर्श के आधार पर मैं इस निष्कर्ष पर पहुँचता हूँ की प्रार्थी–प्रतिउत्तरदाता कौलाश चन्द्र दुर्गापाल श्री दीप लाल साह की दुकान में उन का व्यापार कर अपना और अपनी बहन कुमारी उषा दुर्गापाल की आजीविका चलाता है, उक्त दुकान को खाली करने के लिये न्यायालय से आदेश हो चुका है। दुकान खाली करने की स्थिति में उसके पास कोई भी परिसर व्यापार करने का नहीं रहेगा। विवादग्रस्त परिसर मुख्य बाजार में स्थित है जो व्यापार के लिये उपयुक्त है और इस प्रकार प्रार्थी–प्रतिउत्तरदाता को विवादित परिसर की आवश्यकता सद्भावी और वास्तविक है जहाँ तक तुलनात्मक कठिनाई का प्रश्न है, तुलनात्मक कठिनाई भी प्रार्थी – प्रतिउत्तरदाता के पक्ष में है क्योंकि दीप लाल साह वाली दुकान खाली करने की स्थिति में वह

सड़क पर आ जायेगा जबकि किरायेदार के द्वारा कोई भी प्रयास आल्टरनेटिव एकोडोमेशन तलाश करने का नहीं किया गया है। जहाँ तक किरायेदार के इस कथन का प्रश्न है कि वह उस भाग जो उसके द्वारा खाली कराया गया, में कैलाश चन्द्र व्यापार कर सकता है। सर्वप्रथम तो वह भाग खाली कराया गया या नहीं, प्रस्तुत केस में विचारणीय विषय नहीं है। द्वितीय स्वयं किरायेदार के कथन के अनुसार वह भाग रिहायशी भाग है जिसे व्यवसायिकय प्रयोग में नहीं लाया जा सकता है। अतः विद्वान अवर न्यायालय के द्वारा दिये गये निष्कर्ष में कोई भी विधिक त्रुटि या तात्विक अनियमितता नहीं है और विद्वान अवर न्यायालय के निर्णय में हस्तक्षेप करने को कोई औचित्य नहीं है।

28. अतः अपील निरस्त होने योग्य है। केस की समस्त तथ्य और परिस्थितियों के प्रकाश में पक्षकार अपना अपना व्यय स्वयं वहन करेंगें।"

The appellate Court has also recorded the finding that the comparative hardship lies in favour of the landlord. Relevant portion is quoted below:-

"23. जहाँ तक तुलनात्मक कठिनाई का प्रश्न है, अपीलार्थी की तरफ से यह तर्क दिया गया कि विवादित परिसर में अपीलार्थी करीब 35 वर्ष से व्यवसाय कर रहा है। उक्त दुकान के सम्बन्ध में बाजार में एक गुडविल है और यदि उसको दुकान से बेदखल कर दिया जाता है तो उसे अत्यधिक कठिनाई प्रार्थी की तुलना में होती है क्योंकि प्रार्थी अपना व्यवसाय कहीं भी कर सकता हैं जबकि अपीलार्थी के लिये अपना व्यवसाय अन्यत्र करने के लिये कोई साथन नहीं है। यह सही है कि यदि कोई व्यक्ति किसी व्यवसायिक परिसर से बेदखल कर दिया जाता है तो उसे परेशानी होगी, परन्तु यह प्रार्थना पत्र को निरस्त करने का आधार नहीं है। जैसा कि माननीय इलाहाबाद उच्च न्यायलय के द्वारा अशोक केसरवानी बनाम ललिता प्रसार ए0आर0सी0 2001 वोल्यूम–1 पेज–604 में अवधारित किया गया है;

"Tenant always suffers some sort of hardship on eviction, but that does not mean he cannot be evicted.

26. चुंकि कोई साक्ष्य भी नहीं है जिससे यह सिद्व हो सके कि किरायेदार के द्वारा कोई सिन्सियर प्रयास कोई दूसरा

एकोमोडेशन प्राप्त करने के लिये किया हो तो उस स्थिति में तुलनात्मक कठिनाई भू–स्वामी के हक में इस आधार पर भी है कि जिस परिसर में वह वर्तमान में व्यवसाय कर रहा है उसे खाली करने की स्थिति में उसके पास व्यवसाय करने के लिये कोई स्थान नहीं होगा जबकि विवादित परिसर उसका अपना स्वयं का है और प्रत्येक व्यक्ति अपने स्वयं के परिसर में रहना एवं व्यवसाय करना चाहता है।"

So far as bonafide need is concerned, in ***Mst. Bega Begum V/s Abdul Ahmad Khan 1979 A.I.R. SC page 272,*** the apex Court has held as under:-

"*The connotation of the term of the term 'requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of the Act, which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated under section 21 of the Act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since section 21 of the Act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that in spite of the best efforts he was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardship may be tilted in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for out weight the prejudice or the inconvenience which may likely be caused to the tenants.*"

So far as comparative hardship is concerned, in case of ***Shushila v. IInd Additional District Judge, Banda and others reported in 2003 (1) A.I.R. Page 256,*** It has been held as under: -

"A bare perusal of rule 16 of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Rules, 1972, makes it clear that the rule only prescribes certain factors which have also to be taken into account while considering the application for eviction of a tenant on the ground of bonafide need. Sub-rule (2) of Rule 16 quoted earlier relates to the cases of eviction from an accommodation for business use. Clause (1) of sub-rule (2) provides greater the period of tenancy less the justification for allowing the application; where as according to Clause 9b) in case tenant has a suitable accommodation available to him to shift his business. Greater the justification to allow the application. Availability of another suitable accommodation to the tenant, waters down the weight attached to the longer period of tenancy as a factor to be considered as provided under clause (a) of sub-rule (2) of Rule 16. Yet another factor which may in some cases be relevant under clause (c) is where the existing business of the landlord is quite huge and extensive leaving aside the proposed business to be set up, there would be lesser justification to allow the application. The idea behind sub-clause (c) is apparent i.e. where the landlord runs a huge business eviction may not be resorted to for expansion or diversification of the business by uprooting a tenant having a small business for a very period of time. In such a situation if eviction is ordered it is definitely bound to cause greater hardship to the tenant."

A perusal of the findings recorded by the courts below, it is evident that the landlord respondents are themselves

tenant of the accommodation against whom the proceedings have been initiated being Case No. 7 of 1999 and the eviction decree has already been passed by the courts below. A writ petition was filed being W.P. No. 800 of 2006, the same has been dismissed. I see no reason to disagree with the findings of the courts below on the bonafide need and comparative hardship.

Relying upon the judgment of ***Bhaichand Ratanshi v. Laxmishanker Tribhoyan (1981) 3 SCC 502 in Om Prakash Vs. Bhagwan Das (1986) 2 SCC 428,*** it has been held as under:-

"Admittedly, the appellant and the respondent are displaced persons and the authorities held that since the appellant was living in rented premises there was no reason why he should be deprived of the beneficial enjoyment of his own property.

2. In Bhaichand Ratanshi v. Laxmishanker Tribhoyan this Court interpreting the analogous provisions in Section 13 (1) (g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 observed: (SCC p. 506 para 5)

The legislature by enacting Section 13 (2) of the Act seeks to strike a just balance between the landlord and the tenant so that the order of eviction under Section 13 (1) (g) of the Act does not cause any hardship to either side. The considerations that weight in striking a just balance between the landlord and the tenant were indicated in a series of decisions of the Court of Appeal, interpreting and analogous provision of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (c.32), Section 3 (1), Schedule I, para (h) : Sims v. Wilson (1946) 2 All ER 261; Fowle v. Bell (1946) 2 All ER 668, Smith v. Penny (1946) 2 All ER 672: Chandier v. Strevett (1947) 1 All ER 164 and Kelley v. Goodwin (1947) 1

All ER 810. One of the most important factors in considering the question of greater hardship is whether other reasonable accommodation is available to the landlord or the tenant. The court would have to put ion the scale other circumstances which could tilt the balance of hardship on either side, including financial means available to them for securing alternative accommodation either by purchase or by hiring one, the nature and extent of the business or other requirement of residential accommodation, as the case mat be. It must, however, be observed that the existence of alternative accommodation on both sides is an important but not a decisive factor. On the issue of greater hardship the English courts have uniformly laid down that the burden of proof is one the tenant. We are inclined to the view that on the terms of Section 13 (2) of the Act, the decision cannot turn on mere burden of proof, but both the parties must lead evidence, The question whether or not there would be greater hardship caused to the tenant by passing the decree must necessarily depend on facts and circumstances of each case.

4. There was no infirmity in the order of the Prescribed Authority or that of the learned II Additional District Judge. The refusal of the application of the landlord under Section 21 (1) (a) of the Act would undoubtedly cause greater hardship to him as that would deprive him of his beneficial enjoyment of his own property. In such a case, it could not be said that the landlord had not fulfilled the requirement of the 4th proviso to Section 21 (1) (a) of the Act The High Court obviously committed an error in interfering with the findings of the Prescribed Authority and the learned II Additional District Judge on the ground that the landlord had failed to fulfill the requirements of the 4th proviso to Section 21 (1) (a) of the Act."

In view of the above, the findings recorded by the courts below are findings of fact, I find no ground to interference under Article 226/227 of the Constitution of India in view of ***Surya Dev Rai Vs. Ram Chander SCC 2003 Vol-6 675,*** where the Apex Court has held as under:-

"Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction."

" Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirement are satisfied: (i) The error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby."

"A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent."

"The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and

circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or correction is yet capable of being corrected at the conclusion of the proceedings is an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and or early disposal of the suit of proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that every moment, may become incapable of correction at a letter stage and refused to intervene would result in stravesty of justice or where such refusal itself would result in prolonging of the lis."

"The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

Relying upon the Judgment of ***Surya Dev Rai Vs. Ram Chandra 2003 (6) SCC 675,*** the Apex Court in ***Ranjeet Singh Vs. Ravi Prakash 2004 (3) SCC 682,*** has held as under:-

"As to the exercise of supervisory jurisdiction of the High Court under Article 227 of the Constitution of India also, it has been held in ***Surya Dev Rai*** *that the jurisdiction was not available to be exercised for indulging in reappreciation or evaluation of evidence or correcting the errors in drawing inferences like a court of appeal."*

In view of the aforesaid findings, I see no reason to interfere under Article 226/227 of the Constitution of India. However, writ petition lacks merit.

Petitioner has sought time to vacate the premises. Time is granted upto 31st May, 2007. provided:-

(a) undertaking is furnished by 30th August, 2006 to vacate the premises by 31st of May, 2007.

(b) the petitioners pay the entire rent and damages due up to date by 30th of August, 2006.

(c) the petitioners pay regularly the damages by 1st week of every month.

(d) In case of failure of aforesaid conditions, the respondent/landlord shall be at liberty to execute the decree forthwith.

Consequently, writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.)

18.07.2006

Rathour